IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

THURSDAY, THE 15TH MARCH 2007 / 24TH PHALGUNA 1928

CRL.A.No. 51 of 2003()

SC.187/2000 of ADDL. SESSIONS COURT (ADHOC), THODUPUZHA

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APPELLANT: ACCUSED:

SELVAN, S/O. SEKHARAN,
AGED 38 YEARS, VADAKKEKARA PUTHENVEETTIL,
CHERAKONAM KARA, POOVACHAL VILLAGE,
THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.C.K.PAVITHRAN

RESPONDENTS: COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.THOMAS JOHN AMBOOKEN.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 15/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M. JAMES, J.

Criminal Appeal No. 51 of 2003

Dated this the 12th March, 2007.

J U D G M E N T

On prior information, PW.6, the Sub Inspector of Police, Munnar Police Station, along with PW.5, a police constable of the same station, proceeded to the dilapidated KSEB Quarters bearing No.747, in Ward No.III, of Munnar Panchayat, on 22.8.1997, at about 6.30 p.m. On reaching there, they found the accused, appellant, was engaged in illicit distillation. All the utensils for the illicit distillation were found and distillation was going on. The appellant was maintaining fire to the pot from which distilled arrack was coming out. There were about 20 litres of wash kept adjacent in M.O.2 cannas. As the police has surrounded from all sides, the appellant could not escape. It is a forest area. The accused was arrested. Ext.P1 seizure mahazar was prepared. Ext.P2 is the F.I.R. Two samples each were taken from both the arrack, as well as the wash. Ext.P3 is the chemical analysis report. It show that the percentage of volume of alcohol was found while testing the samples sent to the analyst for analysis.

2. The prosecution examined 6 witnesses and marked 3 documents. Two material objects were also marked. There was no defence evidence. The Additional Sessions Court, (Ad hoc-I), Thodupuzha, found the appellant guilty, and, therefore, convicted and sentenced him to undergo simple imprisonment for a period of one year, and also to pay a fine of Rupees One Lakh, in default of payment, to suffer simple imprisonment for a further period of six months, under Section 55(b) of the Abkari Act. The same is under challenge through this appeal.

3. The learned counsel appearing for the appellant submitted that the accused may not be convicted, relying on the evidence of PWs. 5 and 6, the departmental witnesses alone, as PWs. 1 to 4, the independent witnesses, turned hostile to the prosecution case. The evidence of Pws.5 and 6 were read out by the learned counsel. It is clear from the evidence that the appellant was conducting illicit distillation in the dilapidated KSEB building, as alleged by the prosecution. 300 ml. of arrack, and about 20 litres of wash were detected from the place of occurrence. After cautious appreciation of the evidence, I find, there is nothing to suspect about the evidence of PWs. 5 and 6. Pws.1 to 4 had been won over by the

accused. Unless the evidence of Pws.5 and 6, the departmental witnesses, are found to be unsatisfactory, there is no need to discard their evidence. On re-appreciation of the evidence, I find that their evidence is acceptable. Counsel further submits that the seizure took place on 22.8.1997. Material objects were produced before the court below on 11.9.1997. Hence, the counsel contends, relying on **Narayani v. Excise Inspector** *(2002 (3) KLT 725)*, that in the absence of the evidence, explaining properly as to how the thondi articles were kept, the benefit of doubt should be given to the appellant, accused.

3. PW.6 has clearly deposed that on preparing Ext.P2 seizure mahazar, the signature of the appellant, as well as other independent witnesses were taken, in the samples collected, at the time of seizure, and also the signatures in Ext.P1 obtained. Though the independent witnesses turned hostile, their signatures were admitted. In Ext.P3, chemical analysis report, the analyst has certified that the seal of each packet was intact, and found tallying with the sample seal provided. There is no defence evidence adduced by the appellant to show that he did not sign, at the time of Ext.P1 seizure, on the samples taken by the investigating officer. Therefore, even if

the samples were kept in the custody of PW.6, so long as there is no evidence to show that the sample has been tampered with, and the prejudice has been caused to the appellant, I do not doubt the custody of the samples. In Narayani's case cited above, there was no explanation at all for the proper custody of the thondi articles, the residue and the sample. Whereas, in this case, PW.6 has clearly explained and he also went on to depose that because of heavy work, the production of the same on the next date was prevented. As long as samples taken at the place of occurrence, and at the time of seizure, were not challenged, I need not doubt the proper custody of the samples, as well as the residue of the arrack and wash seized. Therefore, Narayani's case, cited above, is not applicable to the facts of this case.

4. In the above facts situation, I uphold the conviction of the appellant, as found by the court below. At this stage, the learned counsel for the appellant submitted that the sentence of one year is disproportionate to the material objects seized, and the act committed. Though the seizure of arrack was only 350 ml. there was about 20 litres of wash seized. Moreover, he was in the process of illicit distillation. However, considering the circumstances of the case,

as submitted by the counsel for the appellant, I reduce the sentence of simple imprisonment from one year to rigorous imprisonment for six months. The fine of Rupees One Lakhs is sustained. However, the default sentence of six months is reduced to simple imprisonment for three months. The appellant is entitled for set off, as per the law.

Criminal Appeal is partly allowed as above.

J.M. JAMES,
JUDGE

nj.

J.M. JAMES, J.

Criminal Appeal No. 51 of 2003

J U D G M E N T

Dated: 15th March, 2007.